

HELENA ASSOCIATION OF REALTORS
STATEMENT IN SUPPORT OF

SB 305

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 8
DATE 2.6.09
BILL NO. SB 305

The Helena Association of REALTORS® is in complete support of everything contained in SB 305 however we are focusing our comments only on the proposed changes to law contained in Section 4 of the bill.

This particular section of the subdivision and platting act (§76-3-510) was designed to ensure that developers would bear their fair share of the cost of extending capital facilities to the new development. In the world of economic development people often refer to this as "the next mile." This means that if a proposed subdivision intends to hook into the existing public water or wastewater system but the system does not currently extend all the way to the development the developer will foot the bill to extend the capital facility to the development. It is already the responsibility of the developer to pay for the installation of all the capital facilities *within* the proposed subdivision. Extending the facilities simply gets the facility to the development.

In addition to 'extending the facility' developers are required to mitigate any impacts caused to the capital facility by a proposed subdivision. This means, for example, if the additional volume of traffic from a proposed subdivision will create an impact on existing county roads, the developer must mitigate the impact. An example of this may be increased traffic on a given road that results in the need for a new turning lane to provide safe ingress and egress to the road. It could also mean installing a traffic light at an intersection previously served only by a stop sign. These are mitigations to impacts. These are actions that may be necessary to ensure that the additional traffic from a subdivision does not cause a loss in the level of use to the existing residents that depend on that particular capital facility.

However, in some localities county officials also require a developer to pay to upgrade capital facilities such as roads without any consideration to what the impacts of the development may be. No consideration is given to the nexus or proportionality of the impacts and associated costs. Traffic Impact Corridors are being described in the broadest terms possible including "extending to the nearest state or federal highway" thus causing a developer to pay to improve roads many miles away from the subdivision; again, without any consideration given to the nexus or proportionality of the impact.

Individuals in Lewis & Clark County interested in developing their property have been hampered in their ability to do so because of the overly burdensome costs placed on them as a matter of gaining approval for their subdivision. County officials often require the developer to pay to improve currently substandard roads under the guise of the authority to require payment for extension of capital facilities. This has been done as an unwritten policy.

We want to make it clear that we do not believe making improvements to a substandard road to bring it up to county road standards, or any other arbitrary use level, qualifies as an extension of capital facilities. Requiring improvements to bring a road up to county standards without any consideration of the actual impacts to the existing road caused by the subdivision clearly violates the requirement for nexus and proportionality. However, this has not stopped local government officials from requiring these costs be paid in order to gain approval of subdivisions.

We believe that county officials are doing this with a purposeful intent to avoid the rigorous requirements necessary to adopt impact fees under MCA 7-6-1602 and because the impact fee statute does not allow impact fees to be collected for the correction of existing deficiencies in a public facility. We believe this is an abuse of authority and clearly goes beyond the intent of MCA 76-3-510.

Lewis & Clark County is currently going through the process to amend its subdivision regulations. Included within those amendments are requirements, under the guise of the authority contained within MCA 76-3-510, to require developers to pay some portion of the cost of improving existing substandard roads in addition to requiring all necessary mitigation to any possible impacts.

We believe the amendments to MCA 76-3-510 in SB 305 are absolutely necessary to clarify what is appropriate under the Montana Subdivision and Platting Act.

We urge your support for SB 305 and thank you for the opportunity to present our views.